

DOMESTIC RELATIONS COMMITTEE

State Courts Building

Phoenix, AZ

Minutes

December 5, 2008

MEMBERS PRESENT:

Theresa Barrett
William Fabricius
Todd Franks
Grace Hawkins
Honorable David Lujan
Donnalee Sarda
Steve Wolfson

TELEPHONIC:

Honorable Linda Gray
Honorable Peter Hershberger
Sidney Buckman
Daniel Cartagena
Danette Hendry
Ella Maley
Honorable Sally Simmons
Tom Wing

MEMBERS ABSENT:

Honorable Timothy Bee
Honorable Andy Biggs
Honorable David T. Bradley
Jodi Brown
Honorable Beverly Frame
Jeffery Hynes
Honorable Leah Landrum Taylor

Patti O'Berry
Honorable Rebecca Rios
George Salaz
Ellen Seaborne
Russell Smolden
David Weinstock
Brian Yee

STAFF:

Kathy Sekardi
Tama Reily
Amber O'Dell
Eden Rolland

Administrative Office of the Courts
Administrative Office of the Courts
State Senate
State House of Representatives

CALL TO ORDER

Without a quorum present, the December 5, 2008 meeting of the Domestic Relations Committee (DRC) was called to order by Honorable Linda Gray, Co-Chair, at 10:05 am.

APPROVAL OF THE OCTOBER 3, 2008 MEETING MINUTES

The minutes from the DRC October 3, 2008 meeting were not presented for approval at this time, as a quorum was not present.

PROPOSED LEGISLATION A.R.S. §§ 8-106 AND 8-109

This item was tabled as a quorum was not available.

SUBSTANTIVE LAW WORKGROUP REPORT

Steve Wolfson presented the workgroup's revised proposed legislation to modify A.R.S. §§§ 25-403.05, 25-403.02, and 25-351. The proposal, which was previously approved by the DRC at the October 2008 meeting, requires that parents notify each other of the possibility that a convicted or known sexual offender may have access to their child or children, and that parenting plans include a statement regarding the notification requirement. There have since been some language modifications to § 25-403.05 which are intended to mirror the language that exists in the current statutes.

Committee Comments/Concerns:

- The most important words in this revision are '*may have access*'. Legally, for a person to be found to have violated this proposed revised section, they have to have had reasonable notice as to the meaning of '*may have access*' – that is, a written definition of the precise meaning of that statement. Without this, the statute is too vague and will not benefit the court.
- Also, it would be helpful to include some of the comments heard during discussion on this issue at the DRC's September 5, 2008 meeting about the method by which people can access information on child sexual offenders. This could be beneficial for people who are unaware of such information, and help to effectuate the purpose of the provision.
- Several members echoed the need to clarify what qualifies as 'access' – does this mean a one or two mile radius of the parent's home?

Mr. Wolfson stated the workgroup could review this aspect of the proposal, although he added that the court has discretion to determine what access does or does not mean. This issue was not mentioned during the October 3, 2008 meeting.

Ms. Diegan addressed the committee to discuss the potential difficulties in defining 'access', stating it could impose limitations in that not all scenarios can be accounted for in advance of potential situations. She felt it would make sense to leave some discretionary input for the court, and stressed that the primary purpose with this legislation is to ensure there is *notification* in the interest of protecting children.

Donnalee Sarda requested the record reflect proposed language to A.R.S. §25-403.02 which would ultimately require parents write their own parenting plan and it would read as follows:

“Before an award is made, granting joint custody the parent shall submit a proposed parenting plan that includes at least the following:

...6) A statement that the parents understand that they are required to immediately notify the other parent or custodian if the parent or custodian knows that convicted or registered sex offender or person convicted of a dangerous crime against children, may have access to the child.”

Judge Wing stated he would like to see enough clarity in the statute so it can be appropriately enforced.

Mr. Wolfson stated the intent of the legislation was 'direct access' with a sex offender or person convicted of crimes against children as opposed to being within a certain geographic area. He suggested that if the concern could be remedied by saying something along those lines simply and concisely, they would try to achieve that. However, he added that legislation and a statutory framework is not necessarily going to come to a definitive definition, whereas having more specific language exist within the rules of family law procedure might better provide the desired clarification. The workgroup will plan to look at this again at the Substantive Law workgroup meeting in order to meet the legislative deadlines.

Representative Lujan is sponsoring the legislation and amendments will go through him.

Without a quorum present, a vote was not taken.

CREDIT ISSUES WORKGROUP REPORT

Todd Franks presented the workgroup's proposal for legislation to amend A.R.S. § 25-318, concerning disposition of property. He explained that the major change addresses the issues of undisclosed debts and obligations. The current statute states that an undisclosed asset or debt will automatically be equally divided between the parties. However, because Arizona is an 'equitable division' state rather than an 'equal division' state, there are certain circumstances in which a court might choose to engage in an unequal distribution of an asset or debt. Nondisclosure can prevent the court from considering such circumstances, and essentially force an equal division by the court. Thus, as it stands, the statute provides some incentive for nondisclosure.

The proposed legislation addresses these issues by creating standards to deal with the willful concealment of assets or debts, and includes options for penalties that might include forfeiture. Furthermore, because it can be difficult to distinguish between willful concealment and innocent nondisclosure, the statute will require divorcing parties to file a schedule that is modeled upon bankruptcy schedules. The schedules will prompt people for the information they are required to disclose, such as IRA's, 401(k)'s, and pensions, and should serve to eliminate the confusion over what is or is not a debt or asset.

Committee Comments/Concerns

- It seems there is some inconsistency in section (C), which permits the court to provide both parties an interest in an asset that was innocently concealed, yet states in (C)(3) that the presumption is that property not disclosed in the decree were willfully concealed.
 - *This is addressed in the next sentence which states the concealing party has the burden of proof to show by a preponderance of the evidence that the concealment was more likely innocent than willful. The judge is given*

the discretion to overcome that presumption and to do it by the most minimal standard.

Without a quorum present, a vote was not taken.

CUSTODY STATUTE WORKGROUP

Bill Fabricius gave an update on the workgroup's progress. They have received several comments/ideas for possible changes to the custody statute. They will remain open for comment at this time, as several people have indicated they plan to send in their ideas. Comments & ideas should be sent to Kathy Sekardi at ksekardi@courts.az.gov. A meeting of the workgroup will be scheduled once all comments have been received. He also reported that members of the Child Support Committee have shown some interest in contributing to this workgroup.

ADJOURN/CALL TO THE PUBLIC

No comments offered.

Senator Gray advised the committee that it is likely the legislature will spend the full month of January focused on the budget, thus no DRC bills will be heard until February.

Kathy announced that due to the lack of a quorum in today's meeting, and in order that the committee can vote on items not voted on today, a brief teleconference should take place in January, after the Substantive Law and Court Procedures workgroups have met to look at the sex offender notification proposed bill. Members agreed this was necessary.

Meeting adjourned at 11:02am.

NEXT MEETING: TBD